The mental element may be called the specific intent, that which denotes the purpose towards the accomplishment of which the act is directed and which is an essential element of the criminal act, as distinguished from the criminal intent, that is the intention to produce a result which, if accomplished, would constitute a crime, which is concurrent with but not contained in the criminal act. An attempt is to be distinguished from a solicitation and from a conspiracy. If a person be solicited by another to commit a crime and the person solicited refuses, the solicitor is guilty of a solicitation; if he consents, both persons are guilty of a conspiracy; in neither case is either party guilty of an attempt. In order to constitute an attempt there must be an act sufficiently proximate to the intended result. Not every act committed in furtherance of a design to commit a crime is an attempt. Thus if A, intending to poison B, should procure poison with which to do it a year before the contemplated poisoning he would not be guilty of an attempt to kill. One of the chief difficulties in the law of attempts is in determining the relation which the act done must sustain to the intended offense. Usually the word "proximate" has been used in defining this relation. Thus it has been said that the act done "must be proximate and not remote," and that it "must proximately lead to the commission of the crime." Mr. Hitchler illustrates the nicety of the distinctions involved by the following series of Pennsylvania cases on attempts to commit burglary: "X, intending to commit burglary, procures a complete set of burglar implements; he is not guilty of an attempt. He meets a confederate at a distance from the house; he is not guilty. He arrives in front of the house and watches it; he is not guilty. He prepares some of his implements; he is not guilty. He breaks the gate of the yard; he is guilty. He enters the yard without breaking the gate; he is not guilty. He hides in the barn; he is not guilty. He assaults the owner in the yard; he is guilty. He goes upon the steps; he is guilty. He inserts key in lock or places a ladder against the window; he is guilty. He removes moulding or breaks transom; he is guilty." The numerous cases cited and examined show the efforts of the courts to attain precision with respect to an inherently difficult subject matter. E. L.

COURTS—LAWS.

Law Governing Domestic Relations in Indiana.—*Acts of 1907, page 160, Chapter 105. (Indiana). Approved March 5, 1907.* AN ACT to provide for the punishment of the parents of children who abandom them or neglect or refuse to provide proper home, care, food and clothing for them, and to provide for the application of the wages, income or earnings of such persons abandoning such child or children, and giving the court authority to order and direct the payment of the same for the support of such child or children, providing for the expense of extradition of and the production of the accused, and declaring an emergency.

CHILD DESERTION—FAILURE TO SUPPORT—PENALTY.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That the father, or when charged by law with the maintenance thereof, the mother of a child or children under fourteen years of age living in this state, who being able either by reason of having means or by personal services, labor or earnings shall willfully neglect or refuse to provide such child or children with necessary and proper home, care, food and clothing, shall be deemed guilty

of a felony, and upon conviction be punished by imprisonment in the state prison or reformatory for not more than seven years nor less than one year, or in a county jail or in a workhouse at hard labor for not more than one year nor less than three months: *Provided, however,* If upon conviction and before sentence he shall appear before the court in which said conviction shall have taken place and enter into bond to the State of Indiana in such penal sum as the court shall fix, with surety to the approval of the court, conditioned that he or she shall furnish said child or children, with necessary and proper home, care, food and clothing, then said court may suspend such sentence therein, or if the court deems advisable he may suspend such sentence without requiring such bond; *Provided, Further,* That upon a failure of such parent to comply with said (order or) undertaking he or she may be arrested by the sheriff or other officer on a warrant issued on the sworn complaint of a responsible person, or the precipe of the prosecuting attorney, and brought before the court for sentence, whereupon the court may pass sentence, or for good cause shown may take a new undertaking and further suspend sentence as may be just and proper.

WAGES OR INCOME—SUPPORT—ORDER OF COURT.

Sec. 2. It shall be lawful for the circuit court, or the criminal court in counties where one exists, in case of conviction of any person for the offense described in section one of this act, to make an order that such offender shall pay to the person named by said court such portion of his or her wages. income or earnings as shall be proper and just for the care and support and maintenance of his or her child or children, and to enforce the payment of such sums the said court may notify the employer or other persons from whom such offender receives his wages, earnings or income of the proposed action of the court, and upon such order being entered after such notice such employer or other person from whom said offender receives wages, earnings or income, shall pay the same, or such part thereof as the court shall order to such person designated by the court to be used for the care and support of said child or children, and so long as the order of the court is complied with the said court may suspend sentence against said offender, such employer or other person from whom such offender receives wages, earnings or income upon payment to the person designated by said court shall be released from any and all liabilities to any other person to the extent of such payment. In case it shall be made to appear to said court that such offender has prevented or is preventing the carrying out of such order, then a warrant shall issue for his arrest in manner and form as

COST OF PROSECUTIONS.

provided in section one of this act.

Sec. 3. All costs incurred by the sheriff or other officers in bringing such parent or parents in the county where the said offense shall have been committed, and all costs incident to the extradition of such parent or parents shall be paid by the county in which such offense shall have been committed; and the county council shall make such appropriations as may be necessary to carry into effect the provisions and purposes of this act.

"It appears that this statute fills the two purposes for which it is intended very satisfactorily, first, to provide a penalty and second, to provide a means whereby the child or children may have a means of support—a means that can be enforced. It has been construed that these cases may be tried in a juvenile

court, that desertion is not a part of the crime as defined by this law. It also provides a means of securing the arrest of an offender and bringing him in the court, and the venue is in any county where the child is, and is not receiving the proper support.

"I have had several indictments under this law and have found it very practical and satisfactory in every way." Extract from correspondence.—Eds.

WM. J. WOOD, Lebanon, Ind., Pros. Atty. 20th Judicial Circuit.

Instructions to the Jury in Montana.—Below is the text of a letter dated November 19, 1912, from Judge George B. Winston of Anaconda, Montana. It was suggested by a reading of the recent report of Committee E of the Institute. Thereafter is a copy of the law of Montana relating to criminal procedure.—[Eds.]

"I just read with interest the report of Committee 'E' of the Institute in the matter of criminal procedure, reported on page 566, Vol. III, number 4, of the Journal of the American Institute of Criminal Law and Criminology for November, 1912, and especially recommenadtion two and the discussion concerning it. Recommendation two is as follows: 'That such legislation be had as will give to trial judges the right to charge jurors orally and to limit exceptions to such charge to the specific objections made by counsel at the time of the charge in the presence of the jury and before it has retired from the bar.' I think that this recommendation is open to a number of very serious objections, and that many of the objections urged by Mr. William E. Higgins to the recommendation are entitled to great weight. But the chief things to be objected to in this recommendation, it seems to me, are that jurors should be charged orally, and that the exceptions to such charge and the specific objections thereto should be made in the presence of the jury. In view of the fact that the legislature of Montana in 1907 passed two acts relating to this very subject, one regulating the practice in civil cases and one in criminal cases, and both being alike, I am taking the liberty of writing you and of sending you a copy of the act regulating the method of procedure in the trial of criminal actions. It appears to me that the method prescribed by our code is so much better in every way than the one recommended by the committee mentioned that I am going to ask that you give it publication in your Journal. This law has been in force in Montana since March, 1907, and has worked most satisfactorily. It has had the effect of minimizing the reversal of cases on grounds of error in the refusal to give and in the giving of instructions, in both civil and criminal actions. It works no hardship upon either party to the trial and, in my opinion, is one of the most salutary provisions of both our civil and criminal practice acts. Instructions are settled out of the presence and hearing of the jury and, therefore, the jury cannot be influenced or prejudiced by any argument or theory of counsel concerning the matter of the giving or the refusal to give instructions. When the jury are called in after the instructions have been settled they have no intimation whatsoever as to what instructions are given at the request of counsel or what are given of the court's own motion. Neither do they receive any intimation as to what was the contention or theory advanced by counsel during the settlement of the instructions. In actual practice this is how this procedure works: when the evidence is in, the court asks counsel if they have any instructions to offer and, if so, to hand them to the court. On receipt of the requested instructions the court passes those requested by the plaintiff to counsel for the